

REMARKS

Claims 1-7, 9-23 and 53-55 are pending in the application. Claims 1-7, 9-23 and 53-55 stand rejected.

Claims 1-4, 9-11, 21, 23, 53 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,674,923 to Shih et al.

Claims 5-7, 12-14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shih in view of U.S. patent No. 4,730,727 to Petroff.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shih in view of 4,730,727 to Petroff and further in view of U.S. patent No. 5,906,397 to MacWilliams et al.

Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shih in U.S. patent No. 4,057,923 to Chase.

Claims 21 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shih in view of Re. 26,663 to Dwyer, Jr.

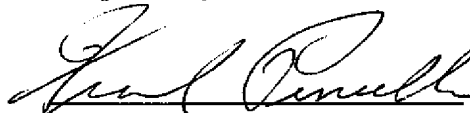
The Examiner has rejected all of the claims under 35 USC 103(a) as being obvious at least in part over US Patent to Shih et al. As Applicant's have previously noted, the Shih et al reference is not appropriate prior art. The Examiner in the response to Applicant's previous argument has maintained the position that US Patent 6,674,923 has an earlier filing date than that of the instant application and is an effective prior art under 35 USC 102(e). Applicant does not disagree with Examiner's contention that the Shih et al reference qualifies as prior art under 35 USC 102(e). However, under an obvious rejection under 35 USC 103(a), the subject reference cannot be used as prior art to disqualify the instant application. In particular, as set forth in 35 USC 103(c)(1) which states, "subject matter developed by another person, which qualifies as prior art only under one or more of sub-sections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person."

As previously noted, the instant application is subject to assignment to Eastman Kodak Company and was the subject to assignment to

Kodak at the time the claimed invention was made. The Shih et al reference is also owned by the same assignee as the instant application, i.e. Eastman Kodak Company. Applicant acknowledges that the instant application was filed on August 17, 2000, which is later than the filing date of the Shih et al reference. However, this is why it qualifies as prior art under 35 USC 102(e). However, as previously noted under 35 USC 103(c)(1) such prior art cannot be used against the instant application. The reference to MPEP 706.02(f) merely identifies the situation when a rejection under 35 USC 102(e) may take place. It does not and cannot override the statute under 35 USC 103(1)(c). However, MPEP section merely identifies when prior art qualifies as 102(e) and does not direct itself whether or not the subject prior art can qualify as prior art 103(1)(c) as Applicant's have identified. Accordingly, Applicant respectfully submits that the rejection by the Examiner is based in part on the Shih et al reference cannot stand.

Accordingly Applicant respectfully submits that the Examiner has not made a prima facie case of obviousness. Accordingly Applicant respectfully submits that the claims in their present form are in condition for allowance and such action is respectfully requested.

Respectfully submitted,



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If the Examiner is unable to reach the Applicant(s) Attorney at the telephone number provided, the Examiner is requested to communicate with Eastman Kodak Company Patent Operations at (585) 477-4656.